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## METHODOLOGICAL GUIDE FOR THE SYSTEMATIZATION AND ANALYSIS OF JURISPRUDENCE RELATED TO CORRUPTION CASES PRODUCT N° 24

**June 2014**

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JURISPRUDENCE RELATED TO CORRUPTION CASES**

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## **Introduction**

The Judicial Branch of Peru, through the leadership of its President and USAID international cooperation support, develops this product aimed at the design of a Methodological Guide for the systematization and analysis of corruption cases jurisprudence that envisions developing a case compendium on the decisional law pertaining to corruption matters at the Supreme Court of Peru.

This methodological guide explains the necessary steps to systematize the jurisprudence, in an analytical way, aimed at the design of the compendium that will apply to cases of official corruption. Such methodology then is totally linked to a preliminary design of what the Compendium should look like with the characteristics required due to the fact that this tool will be used in legal matters, and the specifications needed as it deals with anti-corruption topics.

This Methodological Guide and compendium of decisional law is especially important for the judiciary as it is the first methodological system developed that will be a model for other Supreme Court compendiums addressing different specialties. During the assessment phase of this work, the judiciary has learned that it is not only beneficial for the citizens who will be able to access more orderly information in anti-corruption matters, associated to sentences, but will also serve the final beneficiary that is the judiciary with information duly organized for statistical and logistic ends.

According to the above, the Methodological Guide and the compendium are tools that would contribute directly to the transparency in exercising the jurisdictional function and the internal coordination of the Supreme Court of the Republic.

Finally, the tasks that have been coordinated with the Office of the Judiciary linked to the implementation of the systematization and analysis of jurisprudence are noted; namely, the Centre for Judicial Research has successfully led during the past years the changes and improvements to the judiciary's jurisprudence search system. The Information Technology Management of the Judicial Branch has not only played a technical role, but is a direct participant of the informational base of the Supreme Court.

Also, the assessment experience, embodied in an earlier document to this guide, which showed the extensive experience of the judiciary's officials, highlighted the need to link the direct jurisdictional operators who develop the jurisprudence with the growth of the future compendium which is also recommended by the judiciary's officials themselves.

### **I. Background**

The determination of the judiciary to develop a methodological guide that allows them to systematize their jurisprudence is based on the previous steps taken by the judiciary at legislative, logistic and organizational levels in recent years; a confluence of different situations that now allow its authorities to take the next step.

In this regard, the context in which this methodological guide falls is related to the status of the anti-corruption jurisprudence, the current system of jurisprudence of the Supreme Court, and at the institutional level understanding of the meaning of a compendium relevant to the judgments of the Supreme Court.

Some details of these records were found in the research for the assessment of this product, but others are linked to the legal history of Peru and the minimum technical requirements imposed on any act aimed at the need to systematize a set of judgments that is of particular importance.

### **1.1 Status of the Matter in Anti-corruption Legislation and Jurisprudence**

Acts of official corruption are criminalized by Articles 382-401 of the Criminal Code. In relation to the applicable procedure regulations, it be noted that in 2004 the new Criminal Procedure Code was enacted and progressively implemented in different judicial districts of Peru.

Thus, according to the provisions of Law 29574, as amended by Law 29648, the new Criminal Procedure Code came into force on January 15, 2011 for the Judicial District of Lima, on April 1, 2011 for the Judicial District of Lima North, Lima South and Callao, and June 1, 2011 for the rest of the country. However, the regulation specified that the validity of the new procedural rules were only related to the corruption offenses mentioned in the previous paragraph.

The anticipated enforcement of the new procedural rules for offenses of corruption processes in the judicial districts of the capital of Peru and Callao was because such offenses have a particular connotation and evidential complexity, which required the use of a procedural system much more efficient and that would contribute to clarity. One of the positive aspects that brought the anticipated enforcement of the Criminal Procedure Code was based on the adaptation of cases that were filed under the previous system and had not been judicially qualified. So, the preliminary investigations, complaints unqualified by the Public Ministry, and allegations formalized by the prosecutor who had not received legal qualification, were only proper under the new procedural rules.

However, those prosecutorial claims those had already been judicially qualified or already in process, have continued being processed under the former Criminal Procedure Code until completion. That is why the coexistence of both codes, not only in the country but in the same judicial district, is a fact that can cause confusion if seen disconnected from its context, but is explained by the transition time needs, provided the necessary damage control is done.

Indeed, there are still two procedural rules in force in Peru governing criminal prosecution of corruption crimes, but as of this year 2014 the effective regulation of most ongoing processes belong to the Criminal Procedure Code. The existence of such legal coexistence is relevant because it leaves open to the judiciary's decision to incorporate some important sentences issued under the Criminal Procedure Code, in the group associated to the Compendium, as at the end of the day most legal terms have not changed with the new legislation, with the precise details of the case and without disregarding the news incorporated to the new procedural rule.

Currently, the Supreme Court has two criminal chambers: the Permanent Criminal Chamber that only handles cases under the Criminal Procedure Code, and the Transitory Criminal Chamber that only handles cases under the Code of Criminal Procedures. Additionally, and as an exception, the Special Criminal Chamber of the Supreme Court may take cognizance of official public corruption crimes when those meet the requirements established in articles 99 and 100 of the Constitution.

Focusing on the specific issue of anti-corruption jurisprudence, related to the structure of the resolutions over corruption crimes, we must note that as a result of the investigation conducted we have confirmed that a new structure, clear and well defined to draft the resolutions, is under development. Even though there are a large number of judgments drafted by the rooms through a defined and orderly structure (background, accusatory arguments, defense arguments, case analysis, and resolution part), there is an important sample of other judgments, same type and same rooms, still drafted under a purely basic structure and order (in view, considering, it is resolved).

It is important then to remember that drafting the resolutions is very important, at the external level so they can be effectively understood by the interested parties, and at the internal level to allow the judiciary to systematize its jurisprudence and analyze it, using a Compendium that collects the needed information. In other words, to sort the information properly, it should be minimally clear.

The jurisprudential topic trends are also important. In reviewing the Supreme Court's decisional law, we can note that the most recurrent crimes dealt with at that level are embezzlement, collusion and bribery. However, that does not mean they are the only crimes that are considered at that level, as the investigation shows that the Supreme Court is in some way involved in almost every case of public/official corruption crimes.

According with the above, we observe that among the relevant cases of corruption crimes dealt with by the Supreme Court we can find:

- Proceeding against Carlos Fernando Raffo Arce for embezzlement. On such case the Transitory Criminal Room sentenced the defendant as guilty and imposed on him 4-year suspended prison sentence and payment of two million four hundred and fifty thousand new soles as civil reparation.
- Proceeding against Alberto Fujimori Fujimori for embezzlement by appropriation. On this case the Transitory Criminal Room ruled against nullification in the previous judgment and confirmed effective custodial sentence of seven years and six months to the defendant and the payment of civil reparation of three million new soles.
- The proceedings against various officials of the regional government of Cusco for the crime of collusion. About this, the Transitory Criminal Room ruled against nullification in the previous judgment and confirmed the sentences and repair passed against the accused.

Finally, we must indicate that the Supreme Court is progressing with more relevant changes to the configuration and interpretation of corruption and related crimes.

## **1.2 Supreme Court's Jurisprudence System**

Regarding this point, the jurisprudence in corruption crimes is under a process of sorting out and systematization to facilitate the research and collection processes carried out by the different actors (lawyers, students, judicial workers, and general public) interested in understanding the interpretation criteria that the Supreme Court has regarding the different topics related to these crimes.

The goal of this compendium project is to allow the judiciary to link the jurisprudence set forth by the Supreme Court in corruption crimes with specific search engines referred to crimes, criminal types, procedural concepts, among other criteria that may be identified in the jurisprudence. This allows broadening the understanding and

interpretation that can be done on these crimes, but most of all, it facilitates learning about these aspects in the Supreme Court, as to what is the trend of the same Court over the interpretation criteria and furthermore which are the reasons that justify its implementation and change.

Within the investigation carried out important advances in jurisprudence systematization have been found, establishing the basis to achieve an adequate system for all the needed purposes. Currently, the jurisprudence search system used by the judiciary is divided into three main areas:

1. - Important.- The jurisprudence is divided into four sub-topics: law binding, enforceable binding, plenary agreements, and relevant resolutions.

Regarding these sub-topics, each one develops a general topic and various different matters (civil, criminal, labor, etc.) and the planning is being developed to count on specific search criteria so as to facilitate the recovery of relevant information.

2.- General.- Here we find jurisprudence divided into three sub-topics: jurisprudence newsletter, enforcement search (1998-2011), and enforcement search (2012-2014).

It is here that we can appreciate the change in the system operated by the judiciary since January 2013, as the enforcement search (1998 -2011) sends us back to the old system and the enforcement search (2012-2014) to the new system that was activated through Resolution N° 329-2013-P-PJ of the Presidency of the Judicial Branch of October 31, 2013.

The Access to the new system has been named differently since this month of June. Before, as of May, when the assessment was conducted, it was named "Jurisprudence System (2013), and now it is "Enforcement Search (2012-2014)." The change occurs due to the fact that the year "2013" was referred only to the date in which the search engine was implemented, while the period "2012-2014" is a more precise reference to its contents regarding the dates of the sentences that may be found there.

As for these sub-topics, the same as the previous case applies developing various matters (civil, criminal, labor, etc.), presenting search criteria such as the process type, date of publication or type of resolution, among others.

3.- Others.- Here we find jurisprudence divided into seven sub-topics: )(1) consultations on vague aspects of constitutionality, (2) resolutions from the special criminal court, (3) resolutions from the national criminal court, (4) intercultural justice, (5) constitutional processes, (6) human rights legal search of the ICHR, and (7) consultation on crimes of official corruption.

Due to the nature of the project, our focus is the analysis of the sub-topic "question about "officials' corruption crimes", which contains as search criteria the crime, pending a purge of such crimes to exclude those that do not belong to officials' corruption or that are duplicated due to technical defects.

Based on these items, the next step can be reached which is the compendium associated to a search engine with several criteria to retrieve information on specific topics, such as procedural issues (e.g. presumption of innocence) or development of the offense (for example, the content for the Supreme Court of the term public official).

Also, the new search criteria relate only to the New Criminal Procedure Code, however, if the judiciary for reasons of order and necessity decides to incorporate in the group

associated with the Compendium some judgments issued under the force of the Code of Criminal Procedures, it is important that there is a technical mechanism in place that distinguishes them from previous ones. It should be emphasized that it is very important for the development of anti-corruption policy in Peru, to find updated jurisprudence easily with the new procedural system, which is already in operation nationwide for corruption offenses. The distinction obviously does not imply exclusion; it only requires to be supported in some filtering mechanism for the users' benefit.

It is very important to emphasize, for the future development of the project that most of the Supreme Court judgments issued on corruption crimes for the last years correspond to cases processed under the Code of Criminal Procedures. A smaller number belong to those processed under the New Criminal Procedure Code. The compendium will not only cover procedural descriptors but also substantive descriptors of crime, criminal types and other related topics. The content of the criminal type of corruption offenses has not varied through the amendment of the procedural system, therefore, the compendium will be enriched with the decisional development that the Supreme Court has made over the years concerning the content, scope and interpretation of corruption offenses, regardless of the procedural rules under which the process was handled.

The compendium will allow, once associated to a search engine, to use various searching criteria not only for crimes but also associated and related topics to help interested actors to find adequate, specialized and timely information to understand the rationale followed by the Supreme Court when ruling over these offenses.

Finally, a compendium containing a system of jurisprudence of corruption offenses orderly and systematized by various search criteria and descriptors will help students to investigate the content of these crimes and related issues as applied in Peru, and will help lawyers understand the criteria that the Supreme Court handles to rule on these crimes, and similar cases may rely on the reasoning of the Supreme Court. The judges may also improve the chances to solve evenly over these offenses, according to the parameters established in the decisional law of the Supreme Court.

### **1.3 Functions of a Compendium on Jurisprudence**

For the full understanding of the compendium that will be developed, it is necessary to learn the basic concepts of any compendium, mainly the targeted objectives and its structure.

#### **Definition:**

A compendium is a systematized and standardized list of terms, henceforth called descriptors, which are extracted from various sources that can feed a specific area of knowledge. This systematization and standardization is done in order to control the various terms with which a potential user could try to get information from a given system. In other words, a compendium is not an end in itself, but a tool that will serve as a bridge between the user and the system.

The very nature of this controlled language, which has a structure, is accurate, unique and offers logical and associative relations that is a great advantage over the natural language or not controlled used by most users of a system.

In a more technical sense, the Spanish standard UNE 50 - 106-90 Guidelines for the establishment and development of monolingual thesauri defines compendium as:



vocabulary of a controlled indexing language, formally organized in order to make explicit a priori relationships between concepts.

### **Objectives:**

- Accurately reflect the information contained in the documentation or other items that make up the set to be applied.
- Contain the appropriate terms and references for the compendium's subject matter, considering the language of the set of documents as well as the characteristics and users' information needs.

### **Structure:**

A compendium consists of associative links, which in this case may be defined as:

- **Associative links based on the semantic category:** one based on the type of equivalence between the descriptors using the RT operator (related term). This operator allows to locate all related concepts to each other in the compendium
- **Associative links based on hierarchy:** This case works on GT (general term) and ST (specific term) operators that will indicate the hierarchy relationship between descriptors.
- **Replacement or preferential links:** USE (or see) and UF (use for) operators are used which lead from the synonym or antonym toward the authorized descriptor or preferential term. This rate of substitution is a translation of the natural term to the controlled one.
- **Defining links:** are entered in the compendium by the SA (scope note) operator. This scope note defines or conceptualizes some special descriptor.

## **II. Methodology for the Systematization and Analysis of Jurisprudence**

### **2.1 Location of Sources Linked to Jurisprudence**

The jurisprudence of corruption offenses of the Supreme Court is issued by the Permanent Criminal Chamber and Transitory Criminal Chamber, depending on the date when the process was filed, because, as noted, the Permanent Criminal Chamber applies the processes under the Criminal Procedure Code and the Transitory Criminal Chamber follows the processes under the Code of Criminal Procedure.

There are three ways to check the jurisprudence issued by both criminal chambers:

- a) Physical files found in the Library of the Supreme Court and in the custody of the Rapporteurs of the criminal chambers of the Supreme Court.

In order to review these files, particularly those found in the library, permission must be requested from the Supreme Court through the Judiciary's Research Center, but any interested party has no consultation restrictions as they are completed processes.

- b) Digital files that are in the National Systematized Jurisprudence System. There are two major search engines related to the topic:

### 1.- "Inquiries About Officials Corruption Offences."

This search engine is a specialized browser for corruption crimes of the Supreme Court; however, its only search criterion is crime, and in many cases there is a repetition of the offense but with a different name, which creates a distortion of the actual amount of jurisprudence that can be found.

Also, this search engine does not allow filtering the search by more specific topics, such as procedural issues (e.g. presumption of innocence) or by development of the criminal type (for example, the content of the term public official for the Supreme Court).

Finally, this search engine does not distinguish the jurisprudence issued under the Code of Criminal Procedure from that issued under the Criminal Procedure Code, which limits to some extent the location of updated jurisprudence with the new procedural system, which is already operating at national level for crimes of corruption, so this lack of filtering creates a huge disadvantage.

### 2.- "Search Engine for 2012-2014 Enforcements."

This one is a general search engine for all types of matters (family, civil, criminal, etc.). However, it contains two types of searches, one general and one specialized.

The specialized search in criminal matters, only for the Supreme Court, contains a preliminary filter to identify the resolutions issued with the criminal procedure code, which helps focusing the search of Jurisprudence.

Its other search criteria are by type of crime (e.g. all crimes), by year, by jurisdiction (e.g. transitory criminal room and permanent criminal room), by resource type (for example, review, complaint, competence, etc.) and by type of resolution (for example: auto, enforcement).

Thus, it allows a slightly more specialized search, but still fails to be able to identify specific criteria related to corruption offenses, such as procedural criteria.

The user can find in both search engines a large quantity and variety of resolution types related to corruption offenses either processes followed under the Code of Criminal Procedures or with the Criminal Procedure Code. If the user's intention is to systematize overall corruption offenses resolutions, these search engines will be of some help.

On the contrary, if the user requires more specialized information on certain specific aspects of these crimes, or related matters (e.g. criminal type concepts, procedural aspects, penalties, jurisdictions), will not be able to find it quickly; the user itself will have to filter according to its requirements, which is not ideal and can lead to abandonment of the search after several failed attempts, particularly because there is no certainty as to whether the information is actually recorded, a negative result that can be more directly found with a compendium which indicates that the information sought does not exist.

Finally, regarding digital files, there is another search engine ("search 1998-2011 enforcements ") for jurisprudence of the superior courts (chambers and courts); however no resolutions have been uploaded to that search engine, so no data is

available, making it impossible for the user to know the interpretative criteria from judicial courts other than the Supreme Court.

This further reinforces the need for the Supreme Court to have a compendium that facilitates the users to learn about the jurisprudential development of the Supreme Court on corruption offenses, the contents thereof and related matters.

c) Court jurisprudence collection texts published by the judiciary or by external actors.

Court jurisprudence collection texts are also a source to locate some descriptors that may be important to incorporate into the compendium. These texts contain comments from specialists, in which the emphasis on certain words that qualify as descriptors may be identified.

What should be kept in mind is that these collection texts do not include the transcription of all the resolutions used. Also, it must be considered that most of these collection texts aim to analyze the contents of the crime configuration (that is the criminal type), so the parts of the resolutions used are focused on those points.

This fact makes other aspects and / or contents that can be developed in these decisions not be taken into account because they are not transcribed, not giving the opportunity to the user to understand corruption offenses from important related aspects than criminal type.

d) Finally, but not least important, the law is an essential source, mainly referred to the Criminal Code and the Criminal Procedure Code, which contain essential terms to become descriptors on official/public corruption.

## **2.2 Steps to Identify the Descriptors**

As it has been noted before, descriptors serve as access points, where all the information on a concept is collected. They are used to unambiguously represent the content of the documents and as an essential basis for inquiries from potential users.

Now, the aforementioned Spanish norm "*UNE 50-106-90 Guidelines for the establishment and development of monolingual compendiums*" recommends starting from the particular to the general extraction of terms for the optimal development of a compendium. In this regard, let's also remember that the descriptors are extracted from all available sources that feed the knowledge of a specific area, which have been described above, that collect the technical recommendation to review the specialized literature, doctrine, the judgment itself, and the opinion of experts in the field of the compendium.

In this phase of the project, strictly legal nature descriptors are being collected, as this will allow us to further adapt, modify or place them within a specific hierarchy. The non-legal descriptors, such as those for the "emblematic cases" or geographic descriptors will be evaluated later on to determine their relevance or not in the compendium.

Foreign words or Latin terminology (Latinisms), so frequently used in our present matter, were evaluated at a later stage of the project, especially since the judiciary is developing a Clear and Simple Language Manual. However, if the Latinism is recurrently used in many judgments could now be important in a compendium.

At this stage 107 terms were extracted as candidate descriptors, and should exceed 200 by the end of the project, counting only those that are selected.

### 2.3 Criteria for the Selection of Descriptors for the Compendium

The next step in developing the compendium is to establish the criteria to choose its descriptor terms.

For the specific case of the legal compendium on official corruption crimes, the following criteria were used to extract the terminology.

- **Identification of the thematic overview of the verdict:**

This leads us directly to the crime, with its legal name of bribery or embezzlement. Notwithstanding with other criteria leading to descriptors that allow access to the offense as a whole, that is the proper description of a typical, unlawful and guilty conduct that leads, for example, to the existence of bribery or embezzlement

- **Usefulness or Relevance:**

Determine if its appearance in the compendium is truly justified.

The need to include or not terms that represent too general concepts is assessed, thus preventing alteration of the nature of the compendium. This criterion for selection of descriptors is directly related to its legal relevance, in order to choose descriptors that directly contribute elements that help understand the contents of corruption offenses and / or related issues. The main feature of these descriptors is that they have legal content of their own, and are mostly part of the criminal type of the offense or of procedural aspects. For example: flagrance, judged matter.

Furthermore, this selection criterion has led us to discover descriptors that may or may not have a purely legal content, because they come and are also used in colloquial language, are useful because they integrate the content of corruption offenses and are part of the criminal type, for example, the public official descriptor.

- **Pre-existence of terms in the Judiciary's system:**

Many of the terms found in the summaries, or keywords, as assigned in the register of judgments, are reproducible as descriptors to continue being used to retrieve those judgments.

- **Reiterated common use:**

A term commonly used that comes from the legal or colloquial language. Given the legal characteristics to which the compendium aims, if the commonly used term comes from the colloquial language will be standardized in an equivalent legal descriptor.

This approach has led to descriptors that are constantly repeated in the resolutions issued by the Supreme Court, and that allow to understand procedural issues related to crimes of official corruption, such as, for example, all those relating to evidentiary means used to prove corruption.

- **Avoid Ambiguity:**

The strictly legal terms must be unequivocal in nature. Should there exist any related peculiarity, a technical analysis must be done and decide what type of association will be assigned to it.

- **Concision:**

It is the brevity and precision with which a descriptor can represent a subject or concept. Gender and number of the descriptor is usually evaluated under this criterion.

- **Internal coherence:**

It takes into account normalizing the descriptors so that there is no contradiction between them. For example, in case of foreign languages, whether the original language or translation is chosen that selected option must be always maintained.

- **Novelty**

Of particular importance in a compendium that is associated with jurisprudence, the novelty of a term is a criterion to collect elements of the evolution of the interpretation given by the Supreme Court on the content and / or configuration of corruption offenses and / or its related issues; or the appearance of new elements after a change in the criminal law. For example: asset impair.

The classification criteria also benefit the judiciary as a user, because it provides information on the type of jurisprudence issued by the Criminal Chambers of the Supreme Court, the penalties and the courts of origin. Thus the judiciary may have relevant and reliable information about its outputs. These descriptors correspond mainly to "Body of Origin", "Cases", "Verdict" and " Binding Jurisprudence " hierarchies.

On the other hand, it is particularly necessary to emphasize that the coexistence of the criteria of "Utility or Relevance" and " Reiterated Common Use" requires that when supplementing the compendium the judiciary should consider the importance of both and avoid the possibility that they might cancel each other out. This needs to be watched.

While it is important to choose descriptors that are commonly or repeatedly used, this does not mean that the judiciary associates all decisions that mention it to this common descriptor, but only those in which the descriptor is particularly important and develops its content. For example, the descriptor "accused" could lead to too many resolutions if the search results in all decisions that mention that descriptor, but if the judiciary associates to "accused" only those results in which the descriptor is developed in its content or some relevant aspect, then the compendium will be useful.

One of the problems that we have identified in the current system is the risk of having excessive information as they can recover hundreds of resolutions in which the descriptor used for the search is mentioned, but this is not the principal and / or relevant issue to those decisions. This may cause that the user accesses an excess of unnecessary information and makes it difficult to find the specifically needed information.

That's why it must be emphasized that the objective of the descriptors is that they lead us to retrieve only those results that the descriptor is the principal and / or relevant subject thereof, i.e. that the descriptor performs an adequate filter. The compendium needs to avoid becoming useless due to excess information.

At this stage only the collection of candidate descriptors takes place, which are being approved or dropped after a first filter, provided by our control check linked to the selection criteria, at the preliminary level, since after a thorough evaluation and when more candidate descriptors have been collected, it is possible that some previously

selected ones are not considered in the final product, and others that were discarded at this stage will re-occupy their original place.

The formal representation of descriptors regarding rules of spelling, gender, number and legal slang commonly used, but not formally accepted, is performed in the last stage of implementation of the compendium.

### **III. Preliminary Outline of the Jurisprudence Compendium Structure**

The connections between of the compendium descriptors are given by semantic relations. These relationships control whether a term should be used or not, choosing the right level of generality and allowing the generality or specificity of the search.

#### **3.1 Overall, specific, and related terms**

Connections TG (generic term) and TE (specific term) are used to indicate hierarchical relationships. In this type of relationship, a term is over another because it is broader in scope.

A TR (related term) is used to establish non-hierarchical semantic relation in a compendium. This element allows locating all concepts related to each other in the compendium.

For the specific case of the judgments compendium the following structure is an example:

HIERARCHY ----- CRIMES  
OVERALL TERM ----- ACTIVE BRIBERY  
SPECIFIC TERM ----- GENERIC ACTIVE BRIBERY  
RELATED TERM ----- BACKHANDER

Interpretation of the outline above: CRIMES represent the first classification hierarchy within which we can find generic terms such as ACTIVE BRIBERY, which in turn is subdivided into the specific term GENERIC ACTIVE BRIBERY. The generic and specific terms are properly DESCRIPTORS. The related term BACKHANDER suggests that if we are looking for BRIBERY related crimes we can also locate judgments related to the term BACKHANDER.

In some cases the highest ranking hierarchical term, is also considered a generic term.

#### **3.2 Non descriptors**

Given the above, the compendium also suggests what terms not to use in our searches. These are known as non-preferred terms or NON DESCRIPTORS which are included in the compendium as a warning to the user to use the accepted terms. These NON DESCRIPTORS will be preceded by operator UP (use for) that will be attached to the generic and specific terms for a better understanding.

This NON DESCRIPTOR is usually a synonym or quasi-synonym of the DESCRIPTOR, based on the natural or colloquial language and that, while it is not indexed in the document, it allows the user an access point that will refer him to the appropriate term.

### **3.3 Scope notes**

Is the definition of compendium terms used to avoid ambiguities and homonyms. Strictly speaking it is not a definition as that of a dictionary, but it serves to indicate the use of a term in a particular indexing language, such as the legal terminology in this case.

There is no need to add scope notes to all the compendium terms, as this has, through its structure, a series of relationships that establish the context of the meaning of a given term.

This application note will be emphasized by the NA operator, and will be easily noted when assigned to a given descriptor.

### **3.3 Selection of Descriptors' Hierarchy**

The hierarchy of the descriptors, that is the large fields in which the compendium is divided, corresponds preliminarily to the following:

- I. Crime
- II. Criminal type
- III. Related crimes
- IV. Verdict
- V. Organ of origin
- VI. Procedural
- VII. Resources
- VIII. Procedural subjects
- IX. Emblematic case
- X. Dogmatic quote
- XI. Jurisprudential quote

This grouping follows the universe of judgments checked so far and the doctrine of law in which they are based, as well as considering the thematic boundaries that correspond to the jurisprudence in cases of official corruption.

Following is a detailed explanation of some of these hierarchies to show the way of starting from the descriptors being able to go into more general plans to form essential hierarchies for the construction of a preliminary picture that leads to the construction of the compendium.

Then emphasize that the construction of the compendium goes from the particular to the general, although once it is constructed the compendium searches from the general to the particular.

#### **a) Hierarchy: Procedural**

The development of a criminal process is not only based on analyzing the criminal type to determine whether a crime has been committed or not, but also because of the special characteristics that these types of processes have, the decisions develop

different procedural aspects related to the due process that help ensure the rights of the accused.

Thus, resolutions develop lots of principles, institutions or procedural terms such as "evidence assessment", "judged matter", "presumption of innocence", among others.

In that sense, a compendium on crimes committed by public officials cannot be developed if the procedural aspects that accompany the new model of criminal process model that is currently in effect throughout the country for these criminal types are not developed as well.

That is why we consider it necessary to include as one of the criteria for classification in the compendium, the "Procedure" criterion, where the judgments issued on crimes committed by public officials according to relevant procedural criteria to understand the criminal proceedings and of the crimes described above shall be classified.

What has been sought with the inclusion of this criterion is that the user may have detailed information of the content of procedural criteria used in the implementation of the new criminal process and that the Supreme Court develops in the judgments issued for these type of crimes.

#### **b) Hierarchy: Criminal Type**

One of the main characteristics of the crimes committed by public officials is that their criminal type contains criminal legal and extralegal elements, which makes it difficult to understand the criminal type in itself and the configuration of the offense.

In this sense, through this hierarchy we seek to develop the criminal type of each offense committed by public officials, through the most relevant descriptors for each criminal offense.

In order to select these descriptors, we will use two criteria:

1.- Legal status descriptors: are those descriptors whose meaning is given directly by its legal use, e.g. "public official", "tenders" among others.

2.- Relevant descriptors: are those that have no legal origin but are relevant to configure and understand the criminal type, and therefore the offense; e.g. "funds", "emolument", among others.

In that sense, the aim is that the user can have clear and detailed information on the specific content of certain descriptors that are part of the criminal types. This will be critical to know what is the content that the Supreme Court gives to these elements (descriptors) in order to establish if the criminal type has been configured and therefore if the offense was committed.

#### **c) Hierarchy: Organ of origin**

In the jurisdictional level, the judiciary is organized by judicial districts. Currently there are 31. Similarly, in terms of levels, there is the Supreme Court, which has national jurisdiction; the Superior Courts with jurisdiction in each judicial district; Specialized Courts with jurisdiction in a particular province, and Magistrates' Courts with jurisdiction in a given district.

Judgments of the processes filed in a Magistrate Court may be revised in Specialized Courts; the ones filed in a Specialized Court are reviewed by a Superior Court; and



those filed in a Superior Court, by a Supreme Court of Justice Court. Remarkably, a process initiated by a specialized court may reach the Supreme Court, via the appeal.

The organ of origin criteria is justified for the compendium purposes, because it allows learning about various aspects of the judicial process in certain judicial districts.

That is, allows geographical segmentation of the information that this tool provides. This is very important for statistical purposes, as it can obtain data such as the criminality incidence by judicial district. It also allows having data relating to the effectiveness and credibility of the justice system. These statistics are very important for the decision making of governing bodies of the Judiciary.

In a first stage, the compendium may provide information on the origin of the processes known by the upper chambers, and which have reached the Supreme Court via appeal or complaint. It is recommended to generate tools for a future compendium that may provide information not only by organ of origin, but also the body of process filing.

#### **d) Hierarchy: Verdict**

A criminal process usually ends with a judgment which may be acquittal or conviction. In case of conviction, the court also establishes a penalty which can be custodial sentence, fine or limitation of rights; and it also establishes civil reparation by the processed.

For purposes of a compendium, it is pertinent that this contains a search criteria for such items, as it facilitates the user to observe and understand how the judiciary is approaching and dealing with criminal cases brought before it, and under what circumstances an acquittal or conviction is obtained. It even allows for predictability criteria, but also what is the evolution of the number of years of imprisonment, or under which assumptions the courts also establish fines or penalties limiting rights. Similarly, how much is the amount of civil damages.

On the other hand, such information systematized in statistical order criteria, is a useful tool for the governing bodies of the Judiciary.

#### **e) Hierarchies: Dogmatic quote – Jurisprudential quote**

These two hierarchies are intended to recover judgments in which some doctrine or other judgment is cited. To that end those quotes must refer to a specific descriptor. As can be seen, in this particular case the compendium inputs, as related to the descriptors, will be almost simultaneous with the issuance of judgments, as the quote is made specifically for that case.

For example, if judgment N ° 234-2011 quotes an author of Criminal Law, and the quote shows the legal term "entry ban", will be important to feed this descriptor in the compendium under the hierarchy of " Dogmatic Quote ", that in turn will allow recovering such judgment, but also other judgments including a dogmatic quote showing the term "entry ban".

### **3.4. Contents management software for the development of the compendium**

To support the development of the compendium structure we are using the " Tema Tres " application, which serves to manage and operate controlled vocabularies. Later on it will be evaluated with the judiciary's technical staff if the structure recommended

by the application is maintained on an external level or if it is integrated into the jurisprudence search engine.

As appendices (5.1, 5.2 and 5.3) there are some examples of how the various structures of our compendium are working with said tool.

#### **IV. Previous Actions to the Compendium Implementation**

##### **4.1 Planning Actions of the Judicial Research Center**

The early implementation of the compendium based on this methodological guide implies that the Research Centre of the Judiciary, part of the Executive Council of this State branch, does the following prior actions:

- Future review of the adequacy of the registration and indexing of judgments with the guidelines proposed by the compendium to be implemented.
- Note the terminology or descriptors proposed by the compendium and engage various stakeholders in the registration of documents and publishing them to abide by the authorized terminology. This once automation guidelines are established by the Information Technology Division.
- Support for the best way to include the compendium in the proper jurisprudence search interface. Other similar cases will be jointly reviewed to gather information about them.
- Adapt the judgments log to the new interface (to be implemented) of the Jurisprudence Search System in corruption cases.
- Forecast for improving their statistical data considering the terminology and structure of the future compendium. This will allow knowing in more detail the type of search performed by the various users, and take measures to improve the access to the records.

##### **4.2 Actions in Preparation for the Information Technology Management**

As in the previous section, and to verify the availability and efficiency of the Judiciary's Information Technology Management, it is advisable that it performs the following preliminary actions:

- Coordination to gather information about the structure and interface of the jurisprudence search engine to implement future modifications and improvements to the search experience and retrieval of judgments.
- Coordination to establish the feasibility of including the compendium in the jurisprudence search interface.
- Coordination to establish the degree of difficulty in indexing judgments: a preliminary agreement was reached to gradually implement indexing on existing documentation, while the future information to be published will be made under the new guidelines given by the compendium.
- In order to have a clearer view of the whole process, the Technology Management sees the need to have the complete structure of the compendium to take more concrete actions to implement it in the Jurisprudence search engine. Its main planning is being designed during this phase of the project, in terms of hierarchies, i.e. the general terminology that will house the various descriptors.

Even so, by way of advancement and as an outlook measure, our preliminary plan with the sketched compendium structure has been provided to the management in order to make them familiar with it and that they can also submit their questions to take the final actions for their future implementation of the compendium.

## **V. ANNEXES**

- 5.1 Structure of associative relationships:** worked with “Tema Tres” tool
- 5.2 Structure of Non Descriptors:** worked with “Tema Tres” tool
- 5.3 Structure of Scope Note:** worked with “Tema Tres” tool
- 5.4 Preliminary Outline of the Compendium Structure:** first list of descriptors
- 5.5 Preliminary Hierarchies Chart:** Includes examples of development of hierarchies.

## ANNEX

### 5.1 Structure of associative relationships:

The screenshot displays a web browser window with multiple tabs. The active tab is 'Recursos - Tesauro'. The address bar shows the URL: `localhost/tematres/tematres/vocab/index.php?tema=1&/recursos`. The page header includes navigation links: 'Inicio', 'Menú', 'Sobre...', and 'Búsqueda avanzada', along with a 'Buscar' button. The main content area is titled 'Tesauro Sentencias' and features a section for 'Recursos'. Below this, there is a sub-section 'Recursos' with a list of items, each preceded by a radio button. The items are: 'TE1Apelación', 'TE1Casación', 'TE1Casación excepcional', 'TE1Cotejo activo', 'TE1Revisión de sentencia', and 'TR Impugnación'. The 'TR Impugnación' item is selected. At the bottom of the page, there is a footer with the text 'Fecha de creación: 15-Jun-2014 modificación: 16-Jun-2014' and 'Término aceptado: 15-Jun-2014'. Below this, there is a row of icons representing different data formats: '889723-5', 'DC', 'MADS', 'SKOS-Core', 'VDEX', 'XTM', 'Z3950', 'JSON', and 'JSON-LD'. The bottom of the page features a dark bar with the acronym 'ACFIR' on the left and the URI 'http://localhost/tematres/tematres/vocab/' on the right, followed by the author 'Autor: Sandro Tundo' and a language dropdown menu set to 'español'.

Inicio | Menú | Sobre... | Búsqueda avanzada | Buscar

### Tesauro Sentencias

#### Recursos

Inicio » Recursos

Opciones

Recursos

- ☒ TE1Apelación
- ☒ TE1Casación
- ☒ TE1Casación excepcional
- ☒ TE1Cotejo activo
- ☒ TE1Revisión de sentencia
- ☒ TR Impugnación

Fecha de creación: 15-Jun-2014 modificación: 16-Jun-2014  
Término aceptado: 15-Jun-2014

889723-5 DC MADS SKOS-Core VDEX XTM Z3950 JSON JSON-LD

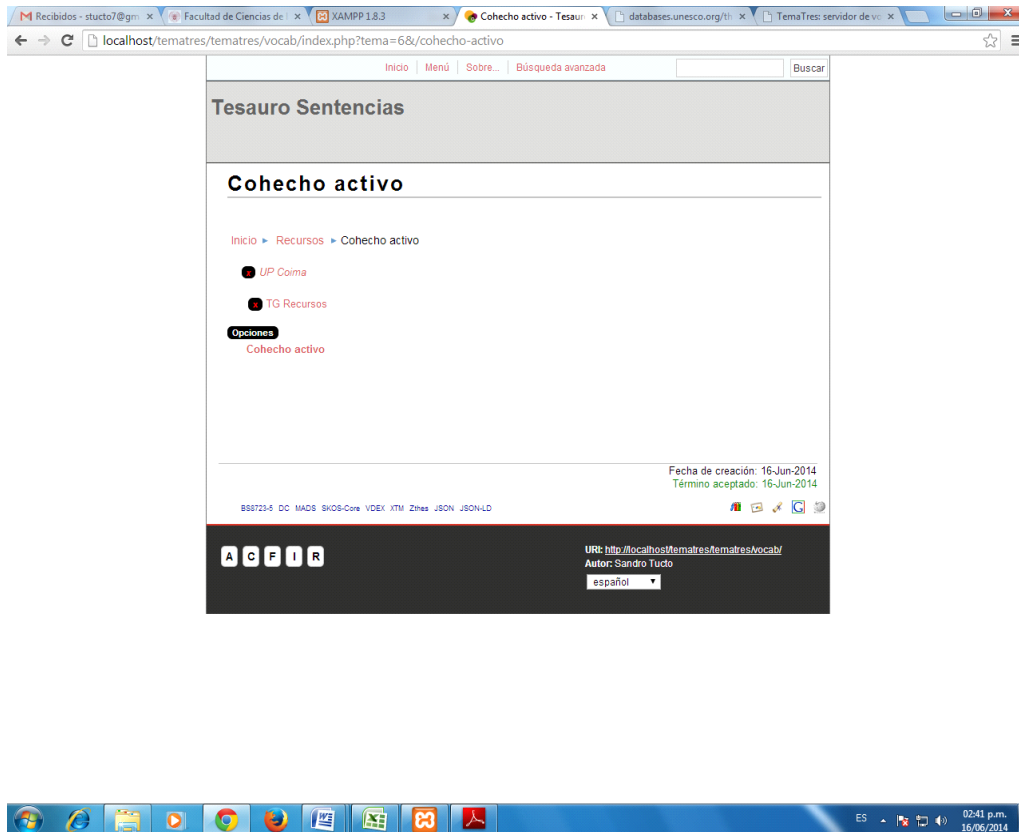
ACFIR

URI: <http://localhost/tematres/tematres/vocab/>  
Autor: Sandro Tundo  
español

ES 02:38 p.m. 16/06/2014

## ANNEX

### 5.2 Structure of Non Descriptors:



## ANNEX

### 5.3 Structure of Scope Note:

Recibidos - stucto7@gmail.com x Facultad de Ciencias de x XAMPP 1.8.3 x Casación - Tesauro Senti x W Recurso de casación - W x Notas x

localhost/tematres/tematres/vocab/index.php?tema=38/casacin

Inicio | Menú | Sobre... | Búsqueda avanzada

Buscar

## Tesauro Sentencias

### Casación

Inicio > Recursos > Casación

**Nota de alcance:**

Es un recurso extraordinario que tiene por objeto anular una sentencia judicial que contiene una incorrecta interpretación o aplicación de la ley o que ha sido dictada en un procedimiento que no ha cumplido las solemnidades legales

2014-06-16 14:47:42

TG Recursos

Opciones

Casación

Fecha de creación: 15-Jun-2014  
Término aceptado: 15-Jun-2014

BS8723-5 DC MAD5 SKOS-Core VDEX XTM Zthes JSON JSON-LD

A C F I R

URI: <http://localhost/tematres/tematres/vocab/>  
Autor: Sandro Tundo  
español

ES 02:48 p.m. 16/06/2014

## ANNEX 5.4 PRELIMINARY OUTLINE OF THE LEGAL COMPENDIUM STRUCTURE

### SELECTED TERMINOLOGY

Nº	DESCRIPTORS	GENERAL TERMINOLOGY	RELATED TERMINOLOGY	USE FOR	HIERARCHY	YES	NO
1	Appeal	Resource	Impugnation	Lawsuit / Claim	Resources	x	
2	Sentence appeal						x
3	Generic active bribery	Active bribery	Bribery	Bribe	Crime	x	
4	Specific active bribery	Active bribery	Bribery	Bribe	Crime	x	
5	Improper passive bribery	Passive bribery	Bribery	Bribe	Crime	x	
6	Proper passive bribery	Passive bribery	Bribery	Bribe	Crime	x	
7	Specific passive bribery	Passive bribery	Bribery	Bribe	Crime	x	
8	Offense against public administration						x
9	Oral trial	Process	Hearing	Trial	Procedural	x	
10	Decentralized office of internal control						x
11	Supreme court	Jurisdictional Body	Supreme Court	Supreme Vocal	Organ of Origin	x	
12	Criminal Procedure Code	Law	Criminal Process	Adjective Code	Procedural	x	
13	Enforcement						x
14	Supreme enforcement						x
15	Process for function crimes attributed to other public officials						x
16	Review						x
17	Review	Resource	Appeal	Resource of Review	Resources	x	
18	Exceptional review	Resource	Jurisprudential doctrine	Extraordinary Resource	Resources	x	
19	Auto qualifying the resource of review						x
20	Incompatible negotiation	Crime	Improper use of position	Moorage	Crime	x	
21	Simple collusion	Collusion		Unfair collusion			

Nº	DESCRIPTORS	GENERAL TERMINOLOGY	RELATED TERMINOLOGY	USE FOR	HIERARCHY	YES	NO
22	Complaint	Resource	Review	Lawsuit / Claim	Resources	x	
23	Aggravated collusion	Collusion	Collusion against the State	Unfair collusion	Crime	x	
24	Immediacy			Closeness	Procedural	x	
25	Plea of inadmissibility of suit filed						x
26	Adjective Code						x
27	Custodial sentence	Penalty	Effective penalty	Imprisonment	Verdict	x	
28	Suspended custodial sentence	Penalty	Liberty	liberation	Verdict	x	
29	Sentence review	Resource	Evidence / Judged matter		Resources	x	
30	Subsumption of typicality	Typicality	Adequacy		Procedural		
31	Prebend						x
32	Jurisprudence quote	Quote	Precedent	Judges	Jurisprudence quote	x	
33	Dogmatic quote	Quote	Doctrine	Authors	Dogmatic quote	x	
34	Presumption of innocence	Evidence	Doctrine		Procedural	x	
35	Flagrancy	Evidence	Evidence	Criminal flagrancy	Procedural	x	
36	Custodial sentence	Penalty	Reparation	Prison	Verdict	x	
37	Fine	Penalty	Reparation		Verdict		
38	Civil reparation	Reparation	Indemnification	Amount to pay	Verdict	x	
39	Receive donation	Bribery	Receive promise	Prebend /Bribe	Criminal type	x	
40	Fraudulent embezzlement	Embezzlement	Use/Appropriation	Fraudulent embezzlement against the State	Crime	x	
41	Fraudulent embezzlement against the State						x
42	Active extradition	Extradition		Forced return	Procedural	x	
43	Crime against the public trust	Related crime	Public trust /Forgery		Related crimes	x	
44	Crime against public peace	Related crime			Related crimes	x	



Nº	DESCRIPTORS	GENERAL TERMINOLOGY	RELATED TERMINOLOGY	USE FOR	HIERARCHY	YES	NO
45	Criminal conspiracy	Related crime			Related crimes	x	
46	Wrongful embezzlement	Crime	Theft	Steal	Crime	x	
47	Efficient collaboration	Evidence	Accused	Snitch	Procedural	x	
48	Co-author	Accused	Author	Guilty	Procedural subjects	x	
49	Co-authoring	Accused	Author	Guilty	Procedural subjects		
50	Primary accomplice	Accomplice	Author	Guilty	Procedural subjects	x	
51	Secondary accomplice	Accomplice	Author	Guilty	Procedural subjects	x	
52	Due process	Right	Judicial Protection / right to due process	Procedure	Procedural	x	
53	Precautionary measure	Measures	Seizure		Procedural	x	
54	Handwriting expertise	Evidence			Procedural		
55	Misappropriation	Crime	Public funds	Misappropriation of funds	Related crimes	x	
56	Technical Case	Evidence			Procedural	x	
57	Perpetration	Author	Accused/author	Guilty	Procedural subjects	x	
58	Instant Authoring	Author	Accused/author	Guilty	Procedural subjects	x	
59	Direct authoring	Author	Accused/author	Guilty	Procedural subjects	x	
60	Impugnation						x
61	Patrimonial imbalance	Crime	Patrimonial increase	Patrimonial unbalance	Criminal type	x	
62	Right to the effective judicial protection	Right	Due process	Petition	Procedural	x	
63	Assessment of evidence	Evidence	Evidentiary mean	Documents	Procedural	x	
64	Re-assessment of evidence	Evidence	Evidentiary mean	Documents	Procedural	x	
65	No nullity						x
66	Nullity						x
67	Illicit enrichment	Crime	Patrimonial increase	Illegal estate	Crime	x	

Nº	DESCRIPTORS	GENERAL TERMINOLOGY	RELATED TERMINOLOGY	USE FOR	HIERARCHY	YES	NO
68	Inadmissible						x
69	Inadmissibility of evidence						x
70	Pretrial detention	Measures	Detention	Prison	Procedural	x	
71	Objective Budget of the resource of review						x
72	Prescription term	Prescription	Term	Termination	Procedural	x	
73	Deviation of plenary agreement	Plenary agreement	Binding jurisprudence	Binding	Procedural	x	
74	Exception to statutory limitations	Prescription	Term	Termination	Procedural	x	
75	Absence from the hearing						x
76	Admissibility requirements						x
77	Document forging	Related crimes			Related crimes	x	
78	Ideological falsehood	Related crimes			Related crimes		
79	Annulment proceedings						x
80	Patrimonial imbalance						x
81	Cause of invalidity						x
82	Admissibility of the complaint resource						x
83	Generic falsehood				Related crimes	x	
84	Obligation to motivate	Right	Sentence	Recitals	Procedural	x	
85	Right to evidence	Right	Evidence	Documents	Procedural	x	
86	Extinction of criminal action	Criminal action	Prescription / Judged matter	Termination	Procedural	x	
87	Procedural compliance	Compliance	Early termination of the process	Termination	Procedural	x	
88	Sufficient evidence	Evidence	Reasoning		Procedural	x	
89	Sentencing	Penalty	Judgment		Verdict	x	
90	Ban reforming to worse	Reform to worse	Impugnation		Procedural	x	
91	Indictment principle	Principles	Prosecutor indictment	Complaint	Procedural	x	
92	Admission test						x
93	University Council	Authority	University		Procedural subjects	x	

Nº	DESCRIPTORS	GENERAL TERMINOLOGY	RELATED TERMINOLOGY	USE FOR	HIERARCHY	YES	NO
94	Principle of specificity	Principles	Legality principle / Typicality		Procedural	x	
95	Confiscation	Measures	Seizure	Retention	Procedural	x	
96	Principle of proportionality	Principles	Reasonableness	Equity	Procedural	x	
97	Witness' deposition	Evidence	Testimony	Snitch	Procedural	x	
98	Victim's deposition	Evidence	Testimony	Aggressed	Procedural	x	
99	Principle of reasonableness				Procedural	x	
100	Reasonable doubt	Evidence	Conviction	Certainty	Procedural	x	
101	Administrative process	Process	Administrative process	Procedure	Criminal type	x	
102	House arrest	Measures	Detention	Prison	Procedural		
103	Appearance	Measures	Detention	Liberty	Procedural		
104	No purpose						x
105	Improper omission						x
106	Vladimiro Montesinos Torres Case (to evaluate)	Emblematic case	Montesinos		Emblematic case	x	
107	Alberto Fujimori Fujimori Case (to evaluate)	Emblematic case	Fujimori		Emblematic case	x	

Legend	
	Key words already in the system
	Non-legal terms

## ANNEX 5.5 PRELIMINARY HIERARCHIES CHART

100	CRIMINAL TYPE	RELATED CRIMES	VERDICT	ORGAN OF ORIGIN	PROCEDURAL	RESOURCES	PROCEDURAL SUBJECTS	EMBLEMATIC CASE	DOGMATIC QUOTE	JURISPRUD ENTIAL QUOTE
Bribery	Public Official	Theft	Custodial sentence	Supreme Court	Judged Matter	Review	Author	Fujimori Case	Anti- corruption policy	Judgment in case 1
Embezzlement		Forgery	Debarment	Superior Court (N° and Judicial District)	Presumption of innocence	Appeal	Accomplice Given Names			